

KENNETH L. NISSLY (SBN 77589) *knissly@omm.com*
SUSAN van KEULEN (SBN 136060) *svankeulen@omm.com*
SUSAN ROEDER (SBN 160897) *sroeder@omm.com*
MISHIMA ALAM (SBN 271621) *malam@omm.com*
O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, California 94025
Telephone: (650) 473-2600
Facsimile: (650) 473-2601

WALLACE M. ALLAN (SBN 102045) *tallan@omm.com*
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

THEODORE G. BROWN, III
tbrown@kilpatricktownsend.com
KILPATRICK TOWNSEND & STOCKTON LLP
1080 Marsh Road
Menlo Park, California 94025
Telephone: (650) 324-6353
Facsimile: (650) 618-2029

Attorneys for Plaintiffs
HYNIX SEMICONDUCTOR INC.,
HYNIX SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR DEUTSCHLAND GmbH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC.,
HYNIX SEMICONDUCTOR AMERICA
INC., HYNIX SEMICONDUCTOR U.K.
LTD., and HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

Case No. C-00-20905 RMW

**HYNIX'S STATEMENT REGARDING
SUPPLEMENTAL BRIEFING
ON REMEDY**

1 Plaintiffs Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix
2 Semiconductor U.K. Limited, and Hynix Semiconductor Deutschland GmbH (collectively,
3 “Hynix”) submit this statement in response to the Court’s Findings of Fact and Conclusions of
4 Law on Spoliation and the Unclean Hands Defense, issued September 21, 2012 (“9/21 Order”).
5 In the 9/21 Order, the Court directed the parties to “submit supplemental briefs, not to exceed
6 twenty pages, addressing what a reasonable, non-discriminatory royalty rate would be with
7 respect to the patents-in-suit. The briefing shall address specifically the royalty rates obtained by
8 Infineon, Samsung, and any other relevant competitors of Hynix.” *Id.* at 65:15-17. Hynix’s brief
9 was to be submitted on or before October 12, 2012, and Rambus’s brief was to be submitted on or
10 before October 26, 2012. *Id.* at 65:18-66:1.

11 In response to the Court’s clear direction, Hynix intends to address in its brief the royalty
12 rates obtained from Rambus by Infineon, Samsung and Elpida, with reference to certain license
13 agreements between those entities and Rambus. The relevant Infineon agreement has been
14 produced in this case and is available for Hynix’s use. By contrast, the relevant Samsung and
15 Elpida license agreements have not yet been produced in this case and therefore cannot be used
16 by Hynix as of the date of this filing.

17 As explained in the October 9, 2012 letter to the Court from Ms. Susan van Keulen
18 (Exhibit A to the accompanying Declaration of Susan van Keulen re Supplemental Briefing on
19 Remedy), Hynix promptly addressed this issue with Rambus. Rambus has cooperated by
20 providing notice to Samsung and Elpida of Hynix’s request for the agreements and has informed
21 each of them that it will wait ten business days before providing the agreements to Hynix for use
22 in this case, subject to a stipulated protective order. Rambus has represented to Hynix that the
23 notice it has provided to Samsung and Elpida complies with the notice provisions in the subject
24 license agreements.

25 In view of Rambus’s requests to Samsung and Elpida, Hynix and Rambus agreed to an
26 eleven-day extension of the current briefing schedule, such that Hynix’s brief would be submitted
27 on or before October 23, 2012 and Rambus’s brief would be submitted on or before November 6,
28 2012. Ms. van Keulen’s October 9, 2012 letter to the Court attached a Stipulation And

[Proposed] Order Modifying The Schedule For Supplemental Briefing On Remedy (“Stipulated Scheduling Order”) (Exhibit B to van Keulen Declaration) which would accomplish this scheduling change, once signed and entered by the Court. As of the date of this filing, Hynix has not received a signed order, presumably because, based on information stated on the Court’s website, the Court is unavailable during the period from October 10, 2012 through October 19, 2012. (van Keulen Declaration, at ¶ 4.)

Accordingly, in anticipation of the Court signing the Stipulated Scheduling Order upon its return, Hynix is filing this statement on the original filing date of October 12, 2012, and will file its substantive response, assuming the Samsung and Elpida licenses have been produced, on October 23, 2012. Hynix reserves its right to seek a further extension if the Samsung and Elpida licensing agreements are not produced to Hynix in sufficient time to make effective use of them on the revised schedule.

Dated: October 12, 2012

By: /s/ Susan van Keulen
SUSAN van KEULEN

KENNETH L. NISSLY
SUSAN van KEULEN
SUSAN ROEDER
MISHIMA ALAM
O’MELVENY & MYERS LLP

WALLACE M. ALLAN
O’MELVENY & MYERS LLP

THEODORE G. BROWN, III
KILPATRICK TOWNSEND & STOCKTON LLP

Attorneys for Plaintiffs
HYNIX SEMICONDUCTOR INC.,
HYNIX SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR DEUTSCHLAND GmbH

OMM_US:71008478.1